

## **MINUTES**

### **MONTANA SENATE 58th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON LOCAL GOVERNMENT**

**Call to Order:** By **CHAIRMAN JOHN C. BOHLINGER**, on February 4,  
2003 at 3:20 P.M., in Room 335 Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. John C. Bohlinger, Chairman (R)  
Sen. Jerry W. Black (R)  
Sen. Brent R. Cromley (D)  
Sen. Jim Elliott (D)  
Sen. Kelly Gebhardt (R)  
Sen. Bill Glaser (R)  
Sen. Rick Laible (R)  
Sen. Jeff Mangan (D)  
Sen. Carolyn Squires (D)  
Sen. Mike Wheat (D)

**Members Excused:** None.

**Members Absent:** Sen. John Esp, Vice Chairman (R)

**Staff Present:** Leanne Kurtz, Legislative Branch  
Phoebe Olson, Committee Secretary

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing & Date Posted: HB 232, 1/28/2003; SB 284,  
1/28/2003  
Executive Action: HB 232, SB 284

**HEARING ON HB 232**

**Sponsor:** Representative Ronald Devlin HD 3, Terry

**Proponents:**

Gordon Morris, MT Association of Counties

Senator Carolyn Squires, SD 34, Missoula

**Opponents:**

None

**Opening Statement by Sponsor:**

**Representative Ron Devlin HD 3, Terry** said HB 232 would allow local governments a little more flexibility in creating capital improvement funds. He maintained the bill was fairly simple, and stated it increased the limitation on these capital improvement funds from \$300,000 to \$500,000. He claimed it cleaned up some language to make the law read better, and it repealed section 7-21-34-14 which said that any left over money had to be put in a fair account. He said this would allow them to save the carry over money in a capital improvement fund so they could maintain some sort of savings account. He pointed out the language was permissive. He said the reason for that was carry over funds were very important for small counties in order to keep their mill levies down. He said the bill was brought to him by MACO. He reserved the right to close.

**Proponents' Testimony:**

**Gordon Morris, MT Association of Counties** said Representative Devlin did a fine job explaining the bill. He assured the committee it was very straight forward. He said it simply gave counties broader authority. He thanked the sponsor for bringing forth the bill and made himself available for questions.

**Senator Carolyn Squires, SD 34, Missoula** read a letter into the record from Missoula County. **EXHIBIT(1os24a01)**

**Opponents' Testimony:**

None

**Questions from Committee Members and Responses:**

None

**Closing by Sponsor:**

**REPRESENTATIVE DEVLIN**, thanked the committee for a fair and quick hearing. He stated this was a very straight forward piece of legislation to bring the codes up to modern times.

**HEARING ON SB 284**

**Sponsor:** SENATOR MIKE WHEAT, SD 14, Bozeman

**Proponents:**

Jennifer Blossom, Gallatin County Auditor  
Ronda Carpenter, Cascade County Commissioners  
John Vincent, Gallatin County Commissioners

**Opponents:**

Barbara Berens, Missoula County

**Opening Statement by Sponsor:**

**SENATOR MIKE WHEAT, SD 14, Bozeman**, said this bill arose from some difficulties Gallatin county had been experiencing with the auditors office. He said it dealt with bills being presented, how long it takes to investigate those claims, and how long it takes to get those claims paid. He maintained the amendments that were passed around **EXHIBIT (los24a02)**, were really the guts of the bill. He said the bill was designed to road map how the auditor was to investigate the claim and approve or disapprove it. If it was approved how long it should take for that claim to be paid, and if it was disapproved then the procedures that are followed in regards to that disapproval. He said the amendment stated under section 2a of the amending language that in thirty days of receiving a claim the auditor either had to approve, disapprove or ask for additional time in which to investigate. If additional time was granted then the claim had to be approved or disapproved within sixty days. He said, if the claim was disapproved after the investigation was completed, then the auditor within five days of the disapproval must provide documentation to the board specifying the reasons. Within fifteen days of the disapproval they must present documentation and testimony to the board of county commissioners at a public hearing. He reiterated this bill was designed to lay out a procedural road map for the auditor and the commissioners on how claims would be paid and investigated, approved or disapproved and a time frame in which that should happen.

**Proponents' Testimony:**

**Jennifer Blossom, Gallatin County Auditor** said she supported the bill as amended because of the history of problems of paying claims in Gallatin County. She said in order to protect vendors, departments and taxpayers, she thought it was important to set some statutes that require time limits on payments, denials and so forth. She said the outgoing auditor had denied a claim at 4:55 on the last day of her term in office and then did not notify anyone the claim had been denied. She maintained it was a \$15,000 dollar payment to the insurance company, and she expressed if they had not found out about the denial, they could have been put in real bind. She believed this bill set a structure to avoid problems like they had experienced.

**Ronda Carpenter, Cascade County Commissioners** said the commissioners in Cascade County asked her to rise in support of the bill not because they had problems but simply because they felt it improved procedure.

**John Vincent, Gallatin County Commissioners** directed the committees attention to a letter from the Gallatin County Commissioners. **EXHIBIT (los24a03)** He maintained they were simply looking for more accountability, direct communication between the auditor, the vendors, and department heads and county commissioners. He felt this put everything out in the open, and gave ample opportunity for those affected to have input into the outcome of a claim. He said the amendments were carefully crafted and the bill preserves the autonomy of the auditor but ensures checks and balances. He believed it would make this process a much more public process, and he hoped would make the process more efficient. He asked for the committee's consideration of the bill with the amendments.

**Opponents' Testimony:**

**Barbara Berens, Missoula County** said she was in opposition of the bill. She said objectively speaking it was the primary statutory responsibility of the county auditor to examine and investigate all claims presented to the county for payment. She maintained that these investigations were conducted with attention to applicable law and county policy as established by the board of county commissioners. She said in other words the commissioners established policy while the auditor enforced it on behalf of the taxpayers. She expanded that permitting the commissioners to override the decision of the auditor compromises the auditors independence. She said with county budgets under increasing pressure she felt now was not the time to diminish the authority and independence of the auditor. From the perspective of Missoula

county in particular the claims process had worked very well and very efficiently under the current language of the statute. She argued the commissioners had many matters to attend to and relied on the auditors judgement on claims. She urged the committee to maintain the statue as currently written.

**Questions from Committee Members and Responses:**

**SENATOR RICK LIABLE** said it appeared at least in Gallatin county there were problems with the relationship between the county commissioners and the auditors. Without some sort of notification to the commissioners about approval of a warrant how would they know.

**Barbara Berens** said the process in Missoula county was that the claims are approved or disapproved, and they provided the commissioners a listing of the claims as approved by the auditor as well as a listing of claims that had been disapproved or returned to the submitting department.

**SENATOR LIABLE** asked if they did it that way because it was in statue or if that was just normal operating procedure.

**Barbara Berens** said she believed their procedure was in compliance with statute.

**SENATOR LIABLE** said he understood the bill was putting time frames on, he wondered if he was missing something.

**Barbara Berens** said the amendment was to put the time frames on. She said with the process in place in Missoula County, it took them no more and many times less than ten days to get claims paid. She said putting time frames on them would inhibit the efficient process that they already had in place.

**SENATOR LIABLE** asked if the bill was passed with the amendment if it would effect the system in Missoula county

**Barbara Berens** said that it would make her efficient process less efficient.

**SENATOR JEFF MANGAN**, said it seemed to him that the statute did not say they had to take the thirty days, so he was trying to understand the efficiency problem. He asked if she could do it ten days now, if it was in statue they could have thirty days if they would take thirty days.

**Barbara Berens**, said absolutely not. She said she thought private industry appreciated vendors who pay their bills promptly. She said she would continue to pay the bills as soon as they possibly could.

**SENATOR MANGAN**, said he wanted to make sure this bill did not hurt Missoula county, but he did not see how it could if they choose to continue their current mode of practice.

**Barbara Berens**, said she had not reviewed the amendments.

**SENATOR MANGAN**, asked if a small business did some work for the county and the claim was denied what recourse under current law does that business have.

**John Vincent**, replied not much. He said there was no requirement in current law that they even be informed.

**SENATOR MANGAN**, asked if the bill with the amendment changed any statute as to what the auditors need to look at to approve or disapprove a bill.

**John Vincent**, said that was correct, it added a time frame and a reporting requirement to the current statute.

**SENATOR MANGAN**, asked if Miss Berens had time to look at the amendment.

**Barbara Berens**, said her difficulty was not with the time frames, but her primary concern was the override of the county commissioners.

**SENATOR MANGAN**, asked how many claims her office may disallow in given year.

**Barbara Berens**, replied she had only been there a month, but in that month she had returned claims for signatures, or claims not submitted in compliance with policy, or purchases not in compliance with policy. She said she had disapproved maybe 6 claims in the month she had been there.

**SENATOR MANGAN**, articulated that the claims were disapproved because the process was not followed correctly but those individuals had an opportunity to correct that.

**Barbara Berens**, said that many claims were fixed and paid.

**SENATOR MANGAN**, asked what her procedure was if a claim was denied.

**Barbara Berens**, said she applied a stamp to the claim explaining why the claim was denied or returned, and the stack of claims being processed as a batch are returned to the accounting department and they take the claims that are denied and send them back to the originating department. She said at that point the department corrects whatever deficiency exists with the claim. If it is a case where they are simply not paying something because it is not in compliance with policy, then it goes away.

**SENATOR MANGAN**, asked what that policy was in Missoula County.

*{Tape: 1; Side: B}*

**Barbara Berens**, said that when she rejected claims they had all involved employees. She said if it were a claim that involved a vendor it would be up to the department head to contact the vendor.

**SENATOR BRENT CROMLEY**, said he understood the bill to do three things. Put a time limit on the auditors office for responding to claims, give a procedure to the auditor of reporting denied claims or questionable claims, he assumed she did not have a problem with that.

**Barbara Berens**, said she did not think the county commissioners were not particularly interested if she rejected a claim because a authorized signature list was not up to date. She thought the reporting might be cumbersome.

**SENATOR CROMLEY**, said the last thing he thought the bill did was to take the responsibility of denying the claims from the auditor and places it with the county commissioners. He asked if she objected to that.

**Barbara Berens**, said she objected to them being able to override a denied claim.

**SENATOR CROMLEY**, said he recalled that in Yellowstone county there being conflict in the past between the auditors office and the county commissioners office. He thought it had to do with payments of claims. He wondered if you were losing something if you took away the auditors authority and place it with the county commissioners.

**SENATOR WHEAT**, said he did not think so. He said if you read through the original bill it mentions a claim where the commissioners had ordered payment of a claim. He said it talked about the auditors right to appeal that decision to the district court. He said he thought there were procedural protections and

guidelines throughout the bill. He said the bill was designed to create a road map for those kinds of bills that the auditors is ultimately going to disapprove. He thought those with intra government questions could be straightened out, but when you have claim like the one that occurred in Gallatin county, it can prove detrimental to the county. He said what we have here is a road map for how those claims are investigated, how they are approved or disapproved, if they are disapproved how the county commissioners and the auditor can review the facts, and if the county commissioners override the disapproval of the auditor they have they right to take it to the district court. He maintained they may be doing things right in Missoula and that was good, but obviously that was not happening in all counties.

**SENATOR JIM ELLIOT**, said he had an issue with the independence of elected officials. He maintained that no one had primacy in matters of this sort. He said on the one hand the law as it was written was to prevent cronyism on the part of the county commission. He said on the other hand the law as it is proposed is to prevent irresponsible behavior on the count of the auditor. He said the bill did put two branches of elected government against one another. He wondered if there was some sort of middle ground or some sort of mediating body where they could go that would be independent of both branches.

**John Vincent**, said by the time you got to that point on a claim of any great significance the next step in the separation would be to take it to court. Had this bill been in statute over the last year in regard to the \$15,000 claim, the commission would have ordered payment of the claim, the auditor would have denied the claim, and then informed the vendor the county commissioners, and informed the county attorney. Then, there would have been an open and publicly noticed hearing that would bring this all out in the open and give the auditor opportunity to make her case in the public eye as to why the claim should not be paid. He maintained she would be making that claim to the three commissioners that were ultimately responsible for taxing and spending in that county jurisdiction. He said it was not behind closed doors. He said at that point if two of the three commissioners vote to pay the claim, despite the auditors protest, it would be paid, but the auditor still has the choice to challenge the payment in district court.

**SENATOR ELLIOT**, asked when a contract was let to a vendor, who was ultimately responsible for the letting of that contract.

**John Vincent**, said the county commissioners were.



**SENATOR ELLIOT**, clarified that the nut of Miss Berens opposition was this gave the county commissioners autonomy over the auditor.

**Barbara Berens**, said she thought he had hit the nail on the head about cronyism within the commissioners office.

**SENATOR ELLIOT**, asked if she could propose an alternative solution.

**Barbara Berens**, stated that the statute as written served them well. She thought Gallatin county had a very specific circumstance that did not need to be legislated.

**SENATOR CAROLYN SQUIRES**, asked what Miss Berens ran as and what here title was after her election.

**Barbara Berens**, replied County Auditor.

**SENATOR SQUIRES**, maintained that she had won a county race, she was trying to figure out why, as an elected official, she was answerable to the county commissioners.

**Barbara Berens**, said other parts of the statute have the county commissioners directing the work of the auditor. She asked them to keep in mind that there were only five elected county auditors left in the state. Not all auditors are elected representatives of the county.

**SENATOR JERRY BLACK**, asked if other counties in Montana had experienced the same types of problems that Gallatin County had experienced.

**SENATOR WHEAT**, said he did not know. He referred the question to Marty Lambert.

**Marty Lambert**, said Yellowstone county had some similar problems. He said he was happy the process was working well in Missoula County but the commissioners ultimately have control over all county business, they are the ones that let contracts, levy taxes, etc.. He said it was really up to them to conduct business. What this bill provides for is the auditors ability to take the matter to district court if they feel strongly enough about the denial of the claim.

**SENATOR BLACK**, said apparently the auditor in Gallatin county was disgruntled. He asked if that could happen even if these procedures were in effect.

**Marty Lambert**, said it would have been much more difficult, because of the thirty day time limitation.

**SENATOR KELLY GEBHARDT**, posed that the commissioners were the legislative branch of county government.

**Marty Lambert**, replied that was true.

**SENATOR GEBHARDT**, asked if the Gallatin County commissioners could not pass a resolution asking the auditor to do this rather than putting into state code.

**Marty Lambert**, replied no, because that would be in violation of statutes they were trying to amend with this bill.

**SENATOR CROMLEY**, asked if the \$15,000 was one claim.

**Marty Lambert**, replied that was correct. It was a deductible amount owed for an insurance claim.

**SENATOR CROMLEY**, asked why the auditor did not pay the claim.

**Marty Lambert**, said she should answer that question. This was in her office in September. He maintained this went to the thirty day issue. If there was good reason to deny payment of that claim, it needed to be brought into the open immediately as opposed to five minutes before she left office on December 31, 2002.

**SENATOR CROMLEY**, asked if anyone had ever asked her why she denied the claim.

**Marty Lambert**, replied he thought the insurance company had not billed them in the one year contemplated in the statute. He maintained if that had been the only reason for the denial it should have only taken her a few days to deny the claim, instead she hung on to it for well over three months. He suspected the real reason was she wanted to act as a super elected official and look at the propriety of the settlement of the underlying claim that the insurance company agreed to settle. He maintained with all due respect was none of the auditors business.

**SENATOR LIABLE**, asked if the option to go to district court was already in existing language.

**SENATOR WHEAT**, said as it exists now it states "no claim against the county shall be paid or warrant drawn therefore unless the same shall have the approval of the county auditor; provided however, that the judge of the district court of the county where

any claim has been disapproved by the county auditor may order the payment of the same." He said that told him that someone would have to go to court and ask for an order for this to be paid. He said that would most likely be the person that wasn't being paid. They would have to file a law suite. He thought the amendments put in place a process that the claim could be paid before you went to district court.

**SENATOR LIABLE**, stated so this bill as amended allows a structure and a road map of how to get to that last portion.

**SENATOR WHEAT**, replied yes, it provides a road map from the time a claim comes into the county all the way through the district court.

**SENATOR ELLIOT**, asked for some background about the incident in Billings. He thought legislation had been brought forth to deal with it two years ago.

**Mary Lambert**, said he thought there similar bill in this committee, he was unsure what position Yellowstone county took on it.

**SENATOR ELLIOT**, said he recalled they had done nothing. He was trying to figure out the procedure in code for submitting a claim against a county. He thought it looked like the claim is submitted to the board of county commissioners who then submit it to the auditor for payment.

**Marty Lambert**, said actually the auditor examined the claim. The auditors duties are explained in section 24-07. The auditor may issue subpoenas, compel testimony to examine the propriety of that claim. The auditor then makes a recommendation to the commissioners. He said at a public meeting they get a whole list of claims. He said most will be indicated approved and some disapproved. Ultimately the commission has to pass on the propriety of the claim.

**{Tape: 2; Side: A}**

**SENATOR ELLIOT**, said 24-24 talks about decisions being made by the board. He wondered if the board makes decisions on the recommendations of the auditor.

**Marty Lambert**, said that statute does seem to suggest that, but if you read the statutes together, you need to respect the position of auditor and give him or her their due. They do have the ability to deny the claim. He took 24-24 to mean there was a separate appeal process for any claimant, resident, or taxpayer

to bring an appeal if the auditor has approved and the commissioners have denied. He said it also provides for a bond. He said they were not dealing with that right now in Gallatin county.

**SENATOR ELLIOT**, said it was a good thing all they had to do was write the law, if they had to understand it, it would be very difficult.

**SENATOR BLACK**, asked the Missoula auditor, if this was adopted would she work as efficiently as she does now.

**Barbara Berens**, replied yes.

**Closing by Sponsor:**

**SENATOR WHEAT**, said this was an engaging and riveting subject. He thought these amendments did exactly what they had been talking about and that was to provide a procedural road map for the auditor and the commissioners and in those rare instances where there were disputes provide a way to get to district court. He encouraged the committee to pass the bill.

**Discussion on Executive Action:**

**SENATOR GEBHARDT**, explained his hand out concerning SB 112.

**EXHIBIT (los24a04)** He said since a large portion of the funding came from the conservation license. He went back to John Fine and asked him to work out the scenarios without the funding of the conservation money, because Senator Esp was concerned about that. He thought that would be done by Thursday.

**SENATOR BILL GLASER**, said they would be prepared to bring forward SB 246 by Thursday.

**SENATOR MANGAN**, said he had a letter regarding SB 191, but he had not had a chance to read it. He said he would be prepared on Thursday as well.

**EXECUTIVE ACTION ON HB 232**

**Motion/Vote:** **SEN. GEBHARDT** moved that **HB 232 BE CONCURRED IN.**  
**Motion carried unanimously.**

**EXECUTIVE ACTION ON SB 284**

**Motion:** SEN. GEBHARDT moved that SB 284 DO PASS.

**Motion/Vote:** SEN. MANGAN moved that SB 284 BE AMENDED. Motion carried unanimously.

**Motion:** SEN. ELLIOTT moved that SB 284 DO PASS AS AMENDED.

**Discussion:**

**SENATOR MANGAN,** said this was a good bill. He thought that the Missoula auditors efficiency would not be challenged so he would support the bill.

**SENATOR GLASER,** said they should remember that by resolution the county commissioners can get rid of that person at the next election cycle.

**SENATOR CROMLEY,** said he would be against it because he thought they were losing some autonomy of the auditors office.

**SENATOR GLASER,** said that the auditor and county commissioners in Yellowstone county had gotten partisan and that was to bad. He thought this would help move things forward.

**SENATOR SQUIRES,** said the Missoula county auditor requested she not support the bill. She said she would respect her wishes.

**SENATOR ELLIOT,** said he recalled that in the past session they tabled the bill because they thought it was a squabble in one area of the state, but now it was back from another part of the state. He said he thought he understood it a little better, and he would vote for the bill.

**Vote:** Motion carried 8-2 with CROMLEY and SQUIRES voting no.

**ADJOURNMENT**

Adjournment: 4:35 P.M.

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SEN. JOHN C. BOHLINGER, Chairman

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PHOEBE OLSON, Secretary

JB/PO

**EXHIBIT (los24aad)**